

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B3

PLR-110064-15

Date:

July 30, 2015

### LEGEND

X =

Y =

Z =

A =

B =

C =

D =

E =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

S =

t =

Dear :

This letter responds to a letter dated February 18, 2015, and subsequent correspondence, submitted on behalf of X by X's representative, requesting a ruling under § 1362(g) and § 1362(b)(5) of the Internal Revenue Code (Code).

### FACTS

According to the information submitted, X was incorporated in State on Date 1 and elected S corporation status effective Date 2. Until Date 3, A owned s% of X; B owned t% of X; and C owned t% of X. On Date 3, B and C sold all their X shares to Y, a foreign corporation, and thus an ineligible shareholder. There was no shareholder agreement authorizing A to prevent the sale. Due to circumstances beyond A's and X's control, the sale of X stock to ineligible shareholder Y terminated X's S corporation election on Date 3.

On Date 4, Y sold all of its X shares to Z, a domestic partnership. Prior to Date 5, Z distributed all of its X shares pro rata to its partners D and E. After the distribution, A, D and E owned all of the X shares. A, D and E are U.S. resident individuals and, therefore, eligible shareholders of an S corporation. X is requesting permission to reelect to be an S corporation effective Date 5, prior to the termination of the five-year waiting period imposed by 1362(g).

### LAW

Section 1362(a) provides that except as provided in 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that if a small business corporation has made an election under 1362(a) and if such election has been terminated under 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under 1362(a) for any taxable year before its fifth taxable year which begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides, in part, that the corporation has the burden of establishing that under the relevant facts and

circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

Section 1362(b)(5) of the Code provides that if -- (A) an election under 1362(a) is made for any taxable year after the date prescribed by 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

### CONCLUSION

Based solely on the facts and the representations submitted, we conclude that the events causing the termination of X's S corporation election were not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation, and were not part of a plan on the part of the corporation or of such shareholders to terminate the election. Therefore, consent is granted for X to make an election to be an S corporation effective Date 5.

In addition X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 5. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 5, within 120 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 5. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed or implied regarding X's eligibility to elect to be an S corporation.

A copy of this letter should be attached to X's federal income tax return for its taxable year for which the S corporation election is accepted as timely filed. A copy of this letter is being sent to X for that purpose.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Bradford Poston  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: